

REMARKS

Claims 1-30 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-68 of co-pending application number 09/545,397. A Terminal Disclaimer is submitted with this paper and is understood to obviate this double patenting rejection.

Claims 1-30 are rejected under the judicially created doctrine of double patenting over claims 1-47 of U.S. Patent No. 6,143,347. A Terminal Disclaimer is enclosed, which is understood to obviate this double patenting rejection.

The submission of these Terminal Disclaimers is made without admitting the propriety of the rejections and is done in order to serve the statutory function of removing the double patenting rejections, and this action raised neither a presumption nor an estoppel with respect to the merits of the double patenting rejections.

Claims 1-20, 22-25 and 27-30 are rejected under 35 U.S.C. Section 103 from Bonaventura et al in view of "Citrus Industry", June 1999, and Pao et al.

In view of the Terminal Disclaimers, it is understood that at least claims 21 and 26 are allowable, inasmuch as these claims are not otherwise rejected and each now is rewritten into independent form.

Applicants submit a copy of the full Bonaventura et al article, which is the primary reference in the Section 103 rejection, as well as a copy of the full Pao article, one of the secondary references. Applicants also enclose an Information Disclosure Statement form and state that these full articles were located after applicants' receipt of the present Office Action. In accordance with Rule 97, applicants state that each of the enclosed Bonaventura et al article and the enclosed Pao et al article was not cited in a communication from a foreign patent office in a counterpart foreign application and, to the knowledge of the undersigned after making reasonable inquiry, the enclosed full copy articles were not known to any individual designated in Section 1.56(c) more than three months prior to the filing of this Information Disclosure Statement.

With reference to the Section 103 rejection, applicants respectfully point out that their claimed invention uses mid-season round orange cultivars which are a Vernia cultivar, a Frost cultivar, or combinations of these. These provide juices which have peak properties during a so-called mid-season time. For example, as specified in at least claim 2, this mid-season occurs in December to February in the Northern Hemisphere.

As specified in the claims, this mid-season feature is distinct from the peak harvesting season for early-to-mid season

round orange fruit (such as Hamlin) but before the peak harvesting season for late season round orange fruit including Hughes Valencia and Rhode Red Valencia orange juice.

Of the references relied upon in the Section 103 rejection, only *Citrus Industry* mentions one of these mid-season cultivars, namely Vernia. This is discussed on page 28 of the article. This *Citrus Industry* passage discusses the "Vernia SC" cultivar as another Valencia cultivar. Aside from the statement in the middle column that this "matures early in the 'Valencia' season and can reach 13 ratio in February", the data on this cultivar regarding "juice quality" relates to fruit samples which were harvested on 14 March 1996 and on 7 April 1997. This is the same time frame as a very common Valencia "late season" cultivar, namely the Hughes Valencia cultivar (which is included in applicants' claims as a late season fruit). See Table 6 on page 28 of the *Citrus Industry* article.

Accordingly, even though the *Citrus Industry* article mentions one of the cultivars specified in applicants' claims, its value as applicants claim is not recognized, and there is no sensory data in terms of taste attributes. Color number values and ratio values are provided, but these are for fruit harvested in the late season time frame, not the mid-season time frame of applicants' claims.

Concerning the other references of the Section 103 rejection, the primary reference relates to blood oranges, not the cultivars according to applicants' claims, while the other secondary reference relates to early season juices.

More particularly, concerning the primary reference, when the enclosed Bonaventura et al article is read in its entirety, the deficiencies thereof become more apparent from the full article as opposed to the abstract which had been available and relied upon in the Office Action.

This article describes processing, packaging, and storage methods to improve shelf-life and sensory quality of fresh-squeezed, non-pasteurized blends of blood orange cultivars. Reported blends of "Tarocco", "Moro", and "Sanguinello" blood orange juices were combinations of fresh-from-the-tree and packinghouse eliminations that represented the normal fruit processing season in Sicily. Sensory panels evaluated "liking" scores on a hedonic scale of one to nine. Juice chemistry values were reported (but not discussed) as final brix, acid, and color of the blended cultivars.

In Bonaventura, et al, test blends of blood orange cultivars were prepared according to standard seasonal availability and were not created to specifically enhance sensory characteristics or juice chemistry of the final blend. Reported

juice blends were not created to enhance the length of the Sicilian juice processing season. This article does not describe how individual cultivars improve juice chemistry of the final blended product. While product stability and sensory "liking" and overall color were noted, the article has no description of whether (or how) each cultivar may have contributed to quality of the final product.

Turning now to Pao et al, this article describes a method for blending early-season "Hamlin" sweet orange or "Marsh" grapefruit juices with any one of "Orlando" tangelo, "Dancy/Murcott" tangerine, "Pineapple" sweet orange, California/Florida "Valencia" sweet orange, and "Ambersweet" hybrid orange. The objective of the study was to improve sensory and chemistry qualities of early season "Hamlin" and "Marsh" grapefruit juice blends marketed at fresh-squeezed, unpasteurized juice products.

The article does disclose that the described blending method could be used to create acceptable quality juices from early season fruit, not to use selected cultivars to bridge the gap between early-to-mid season fruit and late season fruit, as applicants claim. The citrus cultivars described in this article are not the same as those in applicants' claims.

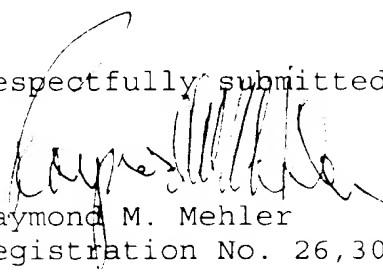
Assuming that it would have been obvious to combine the

three articles, such a combination still would not have arrived at the invention as claimed. None of the references recognize the Vernia cultivar as being anything other than just another Valencia variety. None of the references address the Frost cultivar. At best, the combination of references could have suggested including Vernia cultivars with other Valencia cultivar juices. However, this would not have suggested that any of the cultivars in applicants' claims would bridge the gap as specifically illustrated in the data in applicants' application. This is particularly summarized by the data assembled in FIG. 1.

Reconsideration and withdrawal of the Section 103 rejection are respectfully requested.

Applicants respectfully believe that this application is now in condition for allowance, and favorable consideration is respectfully requested.

Respectfully submitted,


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Dated: June 28, 2001



VERSION WITH MARKINGS TO SHOW CHANGES MADE

21. (Amended) [The method of claim 1, wherein] A method of preparing an orange juice product, comprising the steps of:

harvesting a mid-season round orange cultivar selected from the group consisting of a Vernia cultivar, a Frost cultivar, or a combination of these mid-season cultivars, said harvesting step providing said mid-season orange cultivar which has its peak properties during a time period after the peak harvesting season for early-to-mid season round orange fruit, including Hamlin orange fruit, and before the peak harvesting season for late season round orange fruit including Hughes Valencia and Rhode Red Valencia orange fruit, each peak harvesting season being within the growing territory of the harvesting step;

extracting juice from a volume of said mid-season round oranges of said harvesting step;

collecting the resulting extracted orange juice as a mid-season orange juice having a Brix-to-acid ratio (BAR) during said harvesting step which is greater than that of either early-to-mid season round orange fruit or late season round orange fruit harvested within the time period of said harvesting step;

blending said collected mid-season orange juice with another orange juice source in order to provide a juice composition having a greater BAR value than and sensory qualities equivalent or superior to the sensory qualities of orange juice from either said early-to-mid season round orange fruit juice or said late season orange fruit harvested during said harvesting season;

said collecting provides an orange juice source having a Color Number of at least 36 CN units; and

said blending blends at least about 5 volume percent, based on the volume of the orange juice, of said juice from

the extracting step with said another orange juice source in
order to provide an orange juice product having a Color
Number in excess of 36 CN units---

--23. (Amended) A method of preparing an orange juice product, comprising the steps of:

harvesting Vernia cultivars which have [neither] their peak properties during a time period after the peak harvesting season for early-to-mid season round orange fruit, including Hamlin orange fruit, and before the peak harvesting season for late season round orange fruit including Hughes Valencia and Rhode Red Valencia orange fruit, each peak harvesting season being within the growing territory of the harvesting step;

extracting juice from a volume of said Vernia round oranges of said harvesting step;

collecting the resulting extracted orange juice as a mid-season orange juice having a Brix-to-acid ratio (BAR) during said harvesting step which is greater than that of either said early-to-mid season round orange fruit or said late season round orange fruit harvested within the time period of said harvesting step; and

blending said collected mid-season orange juice with another orange juice source in order to provide a juice composition having a greater BAR value than and sensory qualities equivalent or superior to the sensory qualities of orange juice from either said early-to-mid season round orange fruit juice or said late season orange fruit harvested during said harvesting season.--

--26. (Amended) [The method of claim 23, wherein] A method of preparing an orange juice product, comprising the steps of:

harvesting Vernia cultivars which have their peak properties during a time period after the peak harvesting season for early-to-mid season round orange fruit, including Hamlin orange fruit, and before the peak harvesting season for late season round orange fruit including Hughes Valencia and Rhode Red Valencia orange fruit, each peak harvesting season being within the growing territory of the harvesting step;

extracting juice from a volume of said Vernia round oranges of said harvesting step;

collecting the resulting extracted orange juice as a mid-season orange juice having a Brix-to-acid ratio (BAR) during said harvesting step which is greater than that of either said early-to-mid season round orange fruit or said late season round orange fruit harvested within the time period of said harvesting step;

blending said collected mid-season orange juice with another orange juice source in order to provide a juice composition having a greater BAR value than and sensory qualities equivalent or superior to the sensory qualities of orange juice from either said early-to-mid season round orange fruit juice or said late season orange fruit harvested during said harvesting season;

said collecting provides an orange juice source having a Color Number of at least 36 CN units; and

said blending blends at least about 5 volume percent, based on the volume of the orange juice, of said juice from the extracting step with said another orange juice source in order to provide an orange juice product having a Color Number in excess of 36 CN units.--